IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 24052 of 2004(L)

OP.18/2004 of SUB COURT, MAVELIKKARA
.....

PETITIONER:

ABDULKHADER KUNJU, S/O. SHAHEED KUNJU,
RESIDING AT ARAYAN PARAMBIL, KUNNUMMA P.O.,
THAKAZHI.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN
SRI.R.PADMAKUMAR
SRI.HARISH R. MENON

RESPONDENT:

JAMEELA, VALAYAM PARAMBIL VEEDU,
PANOOR MURI, THRIKKUNNAPUZHA VILLAGE & POST.

BY ADV. SRI.S.SHANAVAS KHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 24052 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE IA 248/04 IN OP(PAUPER) NO.18/04 ON THE FILE OF THE SUB COURT, MAVELIKARA DT.17.01.04.

EXT.P2 : TRUE COPY OF SHOW CAUSE NOTICE DT.7.2.04 ISSUED IN IA NO.248/04 IN OP(PAUPER) NO.18/04 OF THE SUB COURT MAVELIKARA DT.20.02.04.

EXT.P3 : TRUE COPY OF THE ORDER DT.5.4.04 IN IA NO.248/04 IN OP(PAUPER) NO.18/04 ON THE FILE OF THE SUB COURT, MAVELIKKARA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 24052 OF 2004

Dated this the 30th day of May, 2007

JUDGMENT

Ext.P4 order passed by the Subordinate Judge, Mavelikkara directing issuance of arrest warrant against the petitioner who was the counter petitioner in an application for arrest before judgment submitted by the respondent is under challenge. The parties are husband and wife. The suit, it appears, was for recovery of money and also for return of ornaments. Ext.P1 is the application for arrest before judgment under Order XXXVIII Rule I. It is alleged therein that with the objective of protracting or delaying the decree which may be passed against the petitioner, the petitioner had made all arrangements for leaving the country. It appears that on entertaining Ext.P1 the learned Sub Judge passed an order directing respondent to furnish security for the prospective decree debt and issued show cause notice. Ext.P2 is copy of the said show cause notice. The petitioner on receiving Ext.P2 filed Ext.P3 objections clearly contending that he has not even dreamt in terms of leaving the country. It is claimed that he is gainfully employed here only and that the apprehension that he will leave the country is without any basis at all. No enquiry has obviously been conducted into Ext.P2 objections. But on 05.04.04 the court after noticing that security

has not been furnished, in spite of Ext.P2, has passed the impugned order.

2. The security which is contemplated in a proceeding under Order XXXVIII Rule I is not a security for the prospective decree debt. Instead, it is a security for regular appearance of the defendant concerned in court. The petitioner has certainly denied the allegation that he has made arrangements to leave the country. The learned counsel for the petitioner is not in a position to inform me whether the petitioner holds a passport.

3. Having regard to the provisions of Order 38 Rule I and the nature of security contemplated by that Rule, I am of the view that Ext.P4 order can be set aside provided the petitioner complies with the following conditions:

1. If the petitioner holds a passport as on today he will surrender the pass port before the court below.

2. The petitioner will also furnish a personal security bond together with one surety through which the petitioner and the surety will assure the court that the petitioner will appear before the court on every posting dates, unless otherwise exempted by the court.

The Writ Petition is disposed of as above. No costs.

PIUS C. KURIAKOSE, JUDGE

btt